POST-CONVICTION REFORM IN CAPITAL CASES

1. Transcripts

At present, a great deal of delay in the post-conviction part of capital cases occurs during the wait for completion of the transcripts. As Susan Storey testified before the legislature, it often takes over a year just to get the transcript. No entity is directly charged with oversight over the process, and therefore it is easily manipulated.

For example, the transcript can be ordered piecemeal, by design or inadvertence, to create maximum delay. Multiple court reporters are often involved in a single capital case, and it is not uncommon for some "overnight" transcripts to be ordered during a capital proceeding. Both circumstances can give rise to confusion and delay.

To create some oversight and bring coherence to the transcript area, we suggest amending the transcript statute, § 51-61, as follows:

Section 51-61(I) *(New)* **Preparation of transcripts of proceedings in capital cases.** The clerk of the trial court shall prepare a list of all pre-trial hearings, trial proceedings, and post-trial hearings, including any in camera or ex parte proceedings, that specifies the date of the hearing and the name of the court reporter. This list shall be served by the clerk of the trial court on each listed court reporter, the prosecuting attorney, the defendant's trial counsel, and the trial judge within 10 days of the entry of a judgment and sentence.

Any party may serve and file objections to, and propose amendments to the list within 10 days after receipt of the list prepared by the clerk of the trial court. If objections or amendments to the list are served and filed, any objections or proposed amendments must be heard by the trial court judge for settlement and approval. If the judge before whom the proceedings were held is for any reason unable to promptly settle questions, another judge may act in the place of the judge before whom the proceedings were held.

Once the list of hearings is settled, the clerk of the trial court shall serve a copy on each court reporter and shall file a copy with the Supreme Court. The final list should indicate the date it was served on the court reporters and the attorneys.

The court reporters shall complete the transcripts of the proceedings within 90 days after the reporter receives the list of hearings. If the transcripts cannot be completed within this time, the court reporter shall, no later than 10 days before the due date, submit an affidavit to counsel of record and to the Supreme Court stating the reasons for the delay. Any party or any court reporter may move for an extension of time from the Supreme Court.

When the transcript has been completed and delivered to the parties and the court, the Supreme Court shall set a briefing schedule.

— OR —

Amend §51-61(c) to provide that in a capital case, any proceeding in the court shall be recorded in such a manner as to a cause a transcript of the proceeding to be available to the parties of record within 48 hours of the date of the proceeding. This would require the courts to utilize the latest software, which I think is called VTR, and provides the trial court with instantaneous transcription on the judge's laptop.

2. Habeas Corpus proceedings

The delay at the habeas end is due primarily to the automatic stay that is afforded to not only the first, but every successive petition. Also, the lack of a statute of limitations is problematic. To address these concerns we propose that the following provisions from our current habeas reform proposal be altered explicitly to apply to capital habeas cases . The added language can be added to the existing proposal, or it can be placed in a separate package with the other proposals in this separate document.

Just a thought: If we could just leave the successive petitions and SOL language in the main Habeas Reform proposal that would probably be good. If we put separate provisions in this Capital proposal, they might OK the main package, but kill this separate one . . . .

Change section 1 of our present proposal to include the language . . ."on behalf of a person who has been convicted of a violation of section 53a-54a and sentenced pursuant to section 53a-46a " and use the rest unchanged.

Change the first sentence of subsection (a) of section 5 to read "No application challenging a conviction of section 53a-54a and sentence pursuant to section 53a-46a, ..." and use the rest unchanged.

3. Automatic Stay Provision

Amend section 54-95(c), the automatic stay provision, as follows:

In any criminal prosecution in which the defendant has been sentenced to death, the sentence shall be stayed during the pendency of the direct appeal and for thirty days thereafter. If the defendant brings a writ of certiorari in the United States Supreme court, the sentence shall be stayed until the United States Supreme Court has finally determined the matter and for ten days thereafter. If the defendant brings an application for a writ of habeas corpus the sentence shall be stayed until the matter is finally determined and the habeas trial court has decided any petition for certification to appeal and for 10 days thereafter. Only the first application for a writ of habeas corpus shall give rise to an automatic stay pursuant to this subsection. If the defendant brings a second or subsequent application for a writ of habeas corpus, any motion for stay of the sentence shall be made to the habeas court *** and shall only be granted upon a showing by the defendant of a likelihood of success upon the merits. The sole remedy of any party desiring the court to review an order concerning a stay of execution shall be by motion for review.

*** It would be better to have the Supreme Court, not the habeas court, as the gatekeeper for a second stay based on the "likelihood of success upon the merits." But our pending habeas reform proposal uses the habeas court as gatekeeper for successive petitions, so we should probably be consistent.